

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL WRIT PETITION NO.2367 OF 2005**

Baban Shivaji Jadhav

...Petitioner

vs.

Nalini Baban Jadhav & Ors.

...Respondents

Mr.S.S.Patwardhan for the Petitioner

Mr.S.P.Shetty i/b Mr.A.L.Kumar for Respondent No.1

Mr.U.V.Nikam A.P.P. for State

**CORAM: A.S.OKA,J.
DATE : SEPTEMBER 11,2006.**

P.C.:

1. Heard Advocates for the parties. As there is no possibility of amicable settlement, I have taken up the Writ Petition for hearing.

2. The first Respondent claims to be the wife of the Petitioner. The second Respondent claims to be a daughter of the first Respondent born through the Petitioner. Application for maintenance under section 125 of the Code of Criminal Procedure, 1973 was made by the first and second Respondents. The Application was contested by the present Petitioner by filing a reply. Though the Petitioner admitted physical relationship with the first Respondent, he disputed the existence of marriage. According to him, in the year 1975 he had lawfully married to one Nanda, a daughter of Shri Dadu Keru Gaikwad and was happily cohabiting with the said Nanda. A daughter and two sons were born to the said Nanda. According to the case of the Petitioner, due to exigencies of

his employment he was residing at Malvan and he was residing alone. According to his case at that time the first Respondent was serving with him as a maid servant and it was the first Respondent who induced him to have physical relationship with her. It is his case that at the time of marriage of the elder daughter of the first Respondent, the first Respondent forced the Petitioner to give a sum of Rs.75,000/- towards marriage expenses. The learned Trial Judge held that the first Respondent was entitled to receive maintenance of Rs.800/- per month. However, the learned Judge rejected the claim for maintenance of the second Respondent on the ground that she has attained majority. The Revisional Court has confirmed the said finding.

3. The learned Advocate for the Petitioner pointed out that the first Respondent admitted marriage between the Petitioner and the said Nanda and therefore the burden was on the first Respondent to establish the existence of marriage and that her alleged marriage with the Petitioner was solemnised prior to the marriage between the Petitioner and the said Nanda. He submitted that the first Respondent has failed to discharge the said burden.

4. I have considered the said submissions. The courts below have considered the oral and documentary evidence on record and have accepted the case of the first Respondent. The Courts and especially the Sessions Judge found that in fact

the Petitioner had nominated the first Respondent with his employer for pension and other retirement dues. The courts have considered the stand taken by the Petitioner in the reply wherein he admitted his physical relationship with the first Respondent. The Courts below have held that the Petitioner could not lead documentary evidence to show that his marriage with the said Nanda was prior in time. That is the reason why the Courts have held that the first Respondent is entitled to receive maintenance.

5. I find no reason to interfere with the said order in a Writ Petition under Article 227 of Constitution of India by which maintenance amount is fixed at the rate of Rs.800/- p.m.

There is no infirmity in the impugned Judgment and Order.

Petition is rejected.

JUDGE